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**Filed**

AUG 22 2012

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

Attorneys for Defendants

GODADDY.COM, INC. and DOMAINS BY PROXY, INC.

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

**EJD**

**ACADEMY OF MOTION PICTURE  
ARTS AND SCIENCES, a California  
nonprofit corporation,**

**Plaintiff,**

**v.**

**GODADDY.COM, INC., a Delaware  
corporation; THE GODADDY GROUP  
INC., a Delaware corporation; DOMAINS  
BY PROXY, INC., a Delaware  
Corporation;  
GREENDOMAINMARKET.COM, an  
unknown entity; BDS, an unknown entity;  
and XPDREAMTEAM LLC, a California  
limited liability corporation,**

**Defendants.**

Case No. Misc

[USDC Central District Case No:  
CV10-3738-ABC (CW)]

**GODADDY.COM, INC.'S  
NOTICE OF MOTION AND  
MOTION TO COMPEL  
DOCUMENTS AND DEPOSITION  
TESTIMONY FROM NON-  
PARTY GOOGLE, INC.**

**Hearing**

Date:	TBD
Time:	TBD
Place:	TBD
Judge:	TBD

**FAXED**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on a date, time, and location to be determined  
3 by the Court, United States District Court for the Northern District of California,  
4 Robert F. Peckham Federal Building, 280 South 1<sup>st</sup> Street, San Jose, CA 95113,  
5 GoDaddy.com, Inc. ("Go Daddy") shall and hereby does move the Court for an  
6 order compelling Google, Inc. ("Google") to: (1) produce documents in response to  
7 Go Daddy's Subpoena to Produce Documents; and (2) produce a witness to testify  
8 on the topics in response to Go Daddy's Notice of 30(b)(6) Deposition of Google,  
9 Inc.

10 **I. RELIEF REQUESTED**

11 In order to obtain discovery necessary to Go Daddy's defense of the lawsuit  
12 filed by the Academy of Motion Picture Arts and Sciences ("AMPAS") in the U.S.  
13 District Court of the Central District of California, Case No. 2:10-cv-03738-ABC-  
14 CW, and pursuant to Federal Rule of Civil Procedure 45, Go Daddy seeks an order  
15 compelling Google to produce by no later than September 20, 2012, or as soon  
16 thereafter as the Court shall determine, the following categories of documents  
17 responsive to Go Daddy's discovery requests, as set forth in the Subpoena for  
18 Production of Documents on Google, Inc., served on Google by Go Daddy on  
19 June 27, 2012, which can generally be categorized as follows:

- 20 · Documents relating to Google's decisions to fail list websites or parked  
21 pages for the domains at issue in this case.
- 22 · Documents relating to the revenue Google has earned from its Go  
23 Daddy's parked page programs, including revenues earned from the  
24 specific domain names at issue.
- 25 · Documents relating to Google's policies, procedures, rules, and  
26 regulations relating to its AdSense program.
- 27 · Documents relating to Google's policies and filtration processes to  
28 filter domain names that potentially infringe another's trademarks

1 before selecting and placing ads on Go Daddy's parked pages.

2 Documents relating to Google's relationship with AMPAS.

3 In addition, Go Daddy seeks an order compelling Google to produce by no  
4 later than September 27, 2012, or as soon thereafter as the Court shall determine, a  
5 witness to testify as to all topics set forth in the Rule 30(b)(6) deposition subpoena,  
6 served on Google by Go Daddy on June 27, 2012, as well as any topics relevant to  
7 the documents ordered to be produced by this Court.

8 **II. STATEMENT OF ISSUES TO BE DECIDED**

9 1. Whether Google must make a complete production by September 27,  
10 2012, of all readily accessible materials in Google's possession,  
11 custody, and control responsive to the identified document requests at  
12 issue in the present motion pursuant to the subpoena for documents  
13 served upon it on June 27, 2012.

14 2. Whether Google must provide a witness or witnesses for testimony by  
15 September 27, 2012, regarding each of the identified topics at issue in  
16 the present motion pursuant to the Rule 30(b)(6) deposition subpoena  
17 served upon it on June 27, 2012.

18 **III. GO DADDY'S CIVIL LOCAL RULE 37-2 STATEMENT**

19 Pursuant to Civil L.R. 37-2, Go Daddy's subpoenas and accompanying  
20 discovery requests to Google that are the subject of this motion are set forth in full  
21 below, with Google's corresponding objections. Google did not, however, answer  
22 or object to any request individually, as it should have done. Rather, it merely sent a  
23 letter to counsel for Go Daddy objecting broadly to all production and deposition  
24 topic requests. Thus, Go Daddy lists its document and deposition topic requests,  
25 followed by Google's verbatim broad objections:

26 **A. Go Daddy's Document Requests**

27 **DOCUMENT REQUEST NO. 1:**

28 All DOCUMENTS, ESI, COMMUNICATION, and/or other data

1 REFERRING OR RELATING TO GOOGLE's decisions to "fail list" any website  
 2 or parked page for any of the domain names listed in Exhibit 1 attached hereto.

3 DOCUMENT REQUEST NO. 2:

4 DOCUMENTS sufficient to evidence all revenues generated for each of the  
 5 domain names listed in Exhibit 1 attached hereto from January 1, 2005 to present,  
 6 including the dates on which such revenues were generated.

7 DOCUMENT REQUEST NO. 3:

8 DOCUMENTS sufficient to evidence all revenues retained by GOOGLE  
 9 relating to GODADDY's PARKED PAGE PROGRAMS for each year from 2005 to  
 10 present.

11 DOCUMENT REQUEST NO. 4:

12 DOCUMENTS sufficient to evidence all revenues generated by GOOGLE's  
 13 ADSENSE program for each year from 2005 to present.

14 DOCUMENT REQUEST NO. 5:

15 DOCUMENTS sufficient to evidence GOOGLE's rules and regulations for  
 16 domain names participating in GOOGLE's ADSENSE program from 2005 to  
 17 present, including GOOGLE's rules and regulations regarding the content, format,  
 18 and/or number of ads.

19 DOCUMENT REQUEST NO. 6:

20 DOCUMENTS sufficient to describe GOOGLE's policies and procedures  
 21 regarding trademark and/or cybersquatting complaints within GOOGLE's  
 22 ADSENSE program, including GOOGLE's policies and procedures relating to its  
 23 response to trademark and/or cybersquatting complaints from 2005 to present.

24 DOCUMENT REQUEST NO. 7:

25 DOCUMENTS sufficient to describe GOOGLE's methodologies for  
 26 determining whether a domain name within GOOGLE's ADSENSE program  
 27 infringes another's trademark from 2005 to present.

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1 DOCUMENT REQUEST NO. 8:

2 DOCUMENTS sufficient to describe any filtration processes and/or systems  
 3 used in GOOGLE's ADSENSE program to filter domain names that potentially  
 4 infringe another's trademark from 2005 to present.

5 DOCUMENT REQUEST NO. 9:

6 DOCUMENTS sufficient to describe GOOGLE's policies and procedures  
 7 relating to the termination of a domain name's participation in the ADSENSE  
 8 program from 2005 to present.

9 DOCUMENT REQUEST NO. 10:

10 DOCUMENTS sufficient to evidence the description(s) and/or explanation(s)  
 11 GOOGLE provided to participants in its ADSENSE program relating to GOOGLE's  
 12 classification of domain names and/or parked pages from 2005 to present.

13 DOCUMENT REQUEST NO. 11:

14 DOCUMENTS sufficient to evidence the description(s) and/or explanation(s)  
 15 GOOGLE provided to participants in its ADSENSE program relating to the use of  
 16 keywords to produce relevant ads on participants' parked pages from 2005 to  
 17 present.

18 DOCUMENT REQUEST NO. 12:

19 DOCUMENTS sufficient to describe GOOGLE's method(s) for determining  
 20 which pay-per-click ads supplied by GOOGLE appear on parked pages in  
 21 GODADDY's PARKED PAGE PROGRAMS.

22 DOCUMENT REQUEST NO. 13:

23 All DOCUMENTS, ESI, COMMUNICATIONS, and/or other data  
 24 REFERRING OR RELATING TO all agreements, understandings, deals, and/or  
 25 arrangements, financial or otherwise, between GOOGLE and the Academy of  
 26 Motion Picture Arts and Sciences.

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1 DOCUMENT REQUEST NO. 14:

2 All DOCUMENTS, ESI, and/or other data REFERRING OR RELATING TO  
3 all COMMUNICATIONS between GOOGLE and the Academy of Motion Picture  
4 Arts and Sciences.

5 DOCUMENT REQUEST NO. 15:

6 DOCUMENTS sufficient to evidence the decision by GOOGLE to stop  
7 supporting hosted domains within GOOGLE's ADSENSE program.

8 **B. Google's General Objections to Go Daddy's Document Requests**

9 The following is the verbatim blanket objections asserted by Google in its  
10 letter response to Go Daddy:

11 "Google objects to the requests contained in the document subpoena as  
12 overbroad, burdensome, and seeking information that is neither relevant to, nor  
13 likely to lead to the discovery of evidence relevant to, any cause of action in the  
14 litigation at issue.

15 Google further objects to the requests to the extent they seek information  
16 already in Plaintiff's possession or available to Plaintiff from some other source that  
17 is more convenient, less burdensome or less expensive, including information  
18 available to Plaintiff from public sources. This means that if you are seeking  
19 account or other information from Google that is equally available from a party in  
20 the litigation, Google objects to that request on that basis. Google also objects to the  
21 requests to the extent they seek information containing confidential financial,  
22 proprietary or trade secret information, or any information subject to a  
23 confidentiality agreement or protective order. Google objects to the extent the  
24 protective order in this action fails to provide adequate protections for material  
25 sought from Google.

26 Google further objects to the requests to the extent they seek information  
27 protected by any privilege, including the attorney-client privilege, work product  
28 immunity doctrine, common interest privilege, or any other applicable privilege,



1 immunity, or restriction on discovery. We also object to the requests to the extent  
 2 that they are irrelevant, overly broad, vague, ambiguous, unlimited in time or scope,  
 3 fail to identify the information sought with reasonable particularity, or impose an  
 4 undue burden on Google. Google objects to the requests to the extent that they seek  
 5 information that is not relevant or reasonably likely to lead to the discovery of  
 6 admissible evidence. Google objects to the requests to the extent that they seek  
 7 private information. Google also objects to the requests to the extent that they seek  
 8 production of documents that is otherwise prohibited by law.”

9 **C. Go Daddy's Deposition Topic Requests**

10 **DEPOSITION TOPIC NO. 1:**

11 GOOGLE's ADSENSE program, including from 2005 to present, the  
 12 mechanics of the program (i.e. how the program operates), the Terms of Service  
 13 required for the participation in the ADSENSE program, all rules and regulations  
 14 pertaining to the ADSENSE program, all policies and procedures in place  
 15 relating to the ADSENSE program, and the annual revenues generated by the  
 16 ADSENSE program.

17 **DEPOSITION TOPIC NO. 2:**

18 GOOGLE's monetization of domain names through GOOGLE's  
 19 ADSENSE program.

20 **DEPOSITION TOPIC NO. 3:**

21 The revenues generated for each of the domain names listed in Exhibit 1  
 22 attached hereto from January 1, 2005 to present, including the manner in which  
 23 those revenues were calculated, the dates on which such revenues were  
 24 generated, the distribution of any portion of those revenues to any PERSON,  
 25 and the amount of revenues retained by GOOGLE.

26 **DEPOSITION TOPIC NO. 4:**

27 The annual revenues retained by GOOGLE relating to GODADDY's  
 28 PARKED PAGE PROGRAMS for each year from 2005 to present.

1 DEPOSITION TOPIC NO. 5:

2 GOOGLE's policies and procedures relating to trademarks and/or  
3 cybersquatting complaints within or associated with GOOGLE's ADSENSE  
4 program.

5 DEPOSITION TOPIC NO. 6:

6 The methodologies employed by GOOGLE since 2005 to determine  
7 whether a domain name within GOOGLE's ADSENSE program infringes  
8 another's trademark.

9 DEPOSITION TOPIC NO. 7:

10 Any filtration processes and/or systems used by GOOGLE since 2005 in its  
11 ADSENSE program to filter, fail-list, or otherwise prevent domain names that  
12 potentially infringe another's trademark from participating in GOOGLE's  
13 ADSENSE program.

14 DEPOSITION TOPIC NO. 8:

15 GOOGLE's method(s), process(es), and procedure(s) for determining  
16 which pay-per-click ads supplied by GOOGLE appear on parked pages in  
17 GODADDY's PARKED PAGE PROGRAMS.

18 DEPOSITION TOPIC NO. 9:

19 All agreements, understandings, deals, and/or arrangements, financial or  
20 otherwise, between GOOGLE and the Academy of Motion Pictures Arts and  
21 Sciences.

22 DEPOSITION TOPIC NO. 10:

23 Any agreements between GOOGLE and GODADDY relating to  
24 GOOGLE's ADSENSE program.

25 DEPOSITION TOPIC NO. 11:

26 The search for, collection, and production of DOCUMENTS responsive to  
27 any subpoena issued to GOOGLE in this action.

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1           **D.     Google's General Objections to Go Daddy's Deposition Topic**  
 2                       **Requests**

3           The following is the verbatim blanket objections asserted by Google in its  
 4 letter response to Go Daddy:

5           "1. Google objects to the subpoena to appear for a deposition on the  
 6 grounds that it imposes an undue burden on Google, a non-party, to appear as a  
 7 witness. Google also objects to the subpoena to appear for a deposition on the  
 8 grounds that the information sought can be obtained through less burdensome  
 9 means, including from the parties to the case.

10           2. Google objects to the subpoena to appear for a deposition on the  
 11 grounds it is vague, overbroad, duplicative, cumulative, unduly  
 12 burdensome, and oppressive. Google objects to the subpoena to appear for  
 13 a deposition to the extent that the subpoena is abusively drawn and served  
 14 for the purpose of annoying and harassing Google, a non-party.

15           3. Google objects to the Topics to the extent they seek testimony that  
 16 has been, or could be, obtained from any of the parties to the underlying  
 17 litigation or by less burdensome means.

18           4. Google objects to the Topics on the grounds that they impose an undue  
 19 burden and demand that Google, a non-party, appear as a witness at its own  
 20 expense. To the extent that Google appears as a witness pursuant to the subpoena,  
 21 Google shall only do so upon compensation for costs, including attorney fees,  
 22 related to the deposition.

23           5. Google objects to the Topics to the extent they seek testimony that  
 24 contains, or may contain, trade secrets, or other confidential business or  
 25 commercial information entitled to protection under applicable common law,  
 26 statutes or rules. Google objects to the extent that any Stipulated Protective Order  
 27 entered in the case does not provide sufficient protection for the information  
 28 sought from Google.

1           6. Google objects to the Topics to the extent they seek testimony  
 2 protected from disclosure by the attorney-client privilege, the work product  
 3 doctrine, or any other applicable privilege or immunity. To the extent that  
 4 Google testifies in response to the Topics, Google will not testify as to anything  
 5 protected by such privileges or immunities, and any inadvertent disclosure shall  
 6 not be deemed to constitute a waiver of any such privilege or immunity.

7           7. Google objects to the Topics to the extent they seek information that is  
 8 not within Google's knowledge.

9           8. Google objects to the Topics to the extent that they are vague,  
 10 overbroad or unduly burdensome.

11           9. Google objects to the Topics to the extent that they call for testimony  
 12 that is neither relevant to the subject matter of this action nor reasonably  
 13 calculated to lead to the discovery of admissible evidence.

14           10. Google objects to the Topics to the extent that they seek testimony or  
 15 impose obligations beyond what is permissible under the Federal Rules of Civil  
 16 Procedure or any applicable local rules.

17           11. Google objects to the Topics to the extent they seek testimony  
 18 concerning a large range of topics in only a short time frame for providing the  
 19 testimony. To the extent that Google appears as a witness pursuant to the  
 20 subpoena, Google shall do so at a mutually agreeable time and place.

21           12. Google objects to the Topics to the extent they seek disclosure of private  
 22 information.

23           13. Google objects to the Topics to the extent they seek disclosure of  
 24 information that is otherwise prohibited by law."

25 **IV. GO DADDY'S CERTIFICATION PURSUANT TO FED. R. CIV. P. 37-**  
 26 **1(A)**

27           Go Daddy hereby certifies that it has in good faith conferred with Google in  
 28 an effort to obtain the discovery described immediately above without Court action.

1 Go Daddy's efforts to resolve this discovery dispute without Court intervention are  
2 described in the Declaration of Aaron M. McKown in Support of GoDaddy, Inc.'s  
3 Motion to Compel Discovery of Documents and Deposition Testimony from Non-  
4 Party Google, Inc. ("McKown Decl.") and exhibits attached thereto, submitted  
5 concurrently herewith.

6  
7 Dated: August 22, 2012

**WRENN BENDER LLP**

8 By: /s/ Aaron M. McKown

9 Aaron M. McKown  
10 Attorneys for Defendants  
11 GODADDY.COM, INC. and DOMAINS  
12 BY PROXY, INC.  
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